

**CATERING AGREEMENT
MIDLAND COUNTY HORSESHOE**

This Catering Agreement ("Agreement") is made and entered into as of _____, by and between Midland County, Texas (the "County"), acting by and through its duly authorized Director (the "Director"), and _____ (the "Caterer"), collectively referred to as the "Parties," for the purpose of establishing and maintaining high standards of catering services at the Midland County Horseshoe ("MCH").

1. **Grant.** In consideration of the covenants and subject to the terms and conditions contained in this Agreement, the County grants to the Caterer the non-exclusive privilege to catering services during certain authorized events at the MCH.

2. **Term.** The term of this Agreement shall commence on _____ and continue thereafter for a period of twenty-four (24) months unless sooner terminated by either party upon issuance of ten (10) days' written notice to the other party.

3. **List of Approved Caterers.** The Director or the Director's designee shall maintain a list of caterers who have executed a catering agreement with the County for providing catering services at the MCH. The County shall provide this list of caterers to any person or entity leasing all or part of the MCH (each a "*Client*") for an event for which catering services are required. An up-to-date list of caterers is available on the Midland County Horseshoe website: www.midlandhorseshoe.com. The County and the Caterer acknowledge and agree that the Caterer may only provide the catering services contemplated herein at events for which the Caterer directly contracts with a Client. The Caterer acknowledges and agrees that no goods or services will be provided to the County under this Agreement and that this Agreement shall not constitute a contract for goods and services under Chapter 271 of the Texas Local Government Code.

4. **Food Service and Access Fees.** No food service fee will be charged to the Caterer or to the Client who hires the Caterer. The Caterer shall not be responsible for the payment of any fee associated with the Caterer's access and use of the kitchen facilities at MCH (including, but not limited to, the kitchen, walk-in cooler, and freezer); any such fee shall be charged to and paid by the Client who hires the Caterer.

5. **Deposit.** At all times, the Caterer shall maintain a deposit of \$500.00 with the MCH. The deposit shall be held by Midland County without liability for interest and as security for the performance by the Caterer of its covenants under this Agreement. The deposit is not considered as a measure of the County's damages upon the occurrence of any breach by the Caterer of its covenants under this Agreement. The County may commingle the deposit with the County's other funds. The County may, from time to time, without prejudice to any other remedy, use the deposit to satisfy any delinquent fee or any other obligation of the Caterer under this Agreement. If the County elects to use any portion of the deposit to satisfy a fee or obligation of the Caterer, the Caterer must bring the balance of the deposit back up to \$500.00 before being allowed to work future events at the MCH. Upon termination of this Agreement with satisfaction of all covenants of this Agreement, and if all fees and obligations have been paid and satisfied, the County will refund the deposit to the Caterer.

6. **Duties of Caterer.** For each event, unless a written agreement is made between the County and the Caterer to do otherwise, the Caterer shall:

- (i) furnish all tabletop items necessary to serve the meal, including plates, flatware, glasses, salt and pepper shakers, napkins, and condiments;
- (ii) clean all areas of the kitchen, including the grills, fryers, stove, ovens (portable and stationary), sinks, and all other equipment in the kitchen that was used by the Caterer;
- (iii) sweep and mop the kitchen floors;
- (iv) empty all garbage cans into the proper receptacles;
- (v) wash all dishes;
- (vi) clean all tables;
- (vii) remove all trash; and
- (viii) remove all serving equipment from the MCH.

7. **Miscellaneous.** The Caterer shall not make any improvements, additions, or alterations to the MCH. No signs, posters or other similar materials used for advertising purposes may be placed within the MCH facilities, and no solicitation may be made within the MCH without the prior written consent of the Director or the Director's designee. The County has no responsibility to attempt to resolve disputes between the Caterer and a Client. The Caterer shall not delegate, subcontract, or assign its duties under this Agreement without the express written consent of the County.

8. **Inspection.** At the conclusion of an event, a representative of the County shall inspect the MCH facilities and equipment to ensure that the Caterer has performed its duties as prescribed in Section 6 of this Agreement. If the Caterer has not performed its duties pursuant to Section 6 of this Agreement to the reasonable satisfaction of the County representative, the County may either: (i) demand that the Caterer immediately perform and complete said duties to the reasonable satisfaction of the County representative, or (ii) if the Caterer refuses or fails to immediately perform and complete said duties, deduct from the Caterer's deposit the reasonable cost of completing the same.

9. **Insurance.** The Caterer shall at all times during the term of this Agreement maintain and keep in full force and effect insurance in the following types and minimum amounts with companies authorized to do business in the State of Texas:

- (i) Commercial General Liability (including Contractual Liability): Shall be on a per project aggregate, including completed operations, and shall be on an occurrence basis:
 - a. Personal Injury: \$1,000,000.00 per person and \$1,000,000.00 per occurrence
 - b. Property Damage: \$500,000.00 per occurrence
- (ii) Business Automobile Liability: \$250,000.00 combined single limit for Personal Injury and Property Damage and shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-owner vehicles, and employee non-ownership, and the amount of such policy shall be a minimum of \$250,000.00

covering any vehicle used for the execution of the work that is the subject of this Agreement.

- (iii) Workers' Compensation: Statutory limits and shall inure to the benefit of employees injured during the course and scope of their employment by the Caterer pursuant to this Agreement.
- (iv) Employer's Liability: \$500,000.00 per accident or occurrence

All insurance required pursuant to this Agreement shall provide for a waiver of subrogation in favor of Midland County, Texas. All insurance required pursuant to this Agreement, except for Workers' Compensation Insurance, shall name Midland County as an additional insured on an occurrence basis. The County shall be provided the notice by the Caterer's insurance provider not later than thirty (30) days prior to any reduction or termination of such coverage.

The Caterer shall contractually require all contractors, subcontractors, and sub-subcontractors that work on any portion of the work that is the subject of this Agreement to obtain insurance coverage that meets or exceeds the policy requirements and minimum amounts specified herein. All contractors, subcontractors, and sub-subcontractors shall obtain insurance policies that provide blanket waivers of subrogation in favor of Midland County and policies that name Midland County as an additional insured on an occurrence basis (except Workers' Compensation Insurance).

The parties agree that, prior to the execution of this Agreement, the Caterer shall provide one or more certificates of insurance specifically stating that these requirements have been met and subject to the approval of the County. The County shall not be required to provide any insurance whatsoever pursuant to this Agreement. The Caterer certifies that the certificate of insurance provided as required herein complies with the requirements of Chapter 1811 of the Texas Insurance Code.

10. **Default and Remedies.** If the Caterer breaches any of the covenants set forth in this Agreement, the County shall notify the Caterer in writing of the breach. If the Caterer fails to remedy the breach within ten (10) days of its receipt of notice of the breach from the County, the County may terminate this Agreement and remove the Caterer's name from the list of caterers on the Midland County Horseshoe website. These remedies are in addition to any other remedies that the County has at law or in equity as a result of the Caterer's breach.

11. **Compliance with Laws.** The Caterer shall comply with all applicable standards, ordinances, laws, and regulations. The Caterer shall comply with all applicable laws concerning employment and non-discrimination. The Caterer is responsible for the conduct of its agents and employees. The Caterer may not serve any alcoholic beverage.

12. **Indemnity.** **THE CATERER SHALL INDEMNIFY, HOLD HARMLESS, AND DEFEND THE COUNTY AND ALL OF THE COUNTY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, INCLUDING ACCIDENTAL DEATH, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEYS FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF**

ANY NEGLIGENT ACT OF THE CATERER, ITS AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, IN THE EXECUTION, SUPERVISION, AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS AGREEMENT, AND THE CATERER SHALL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS THAT MAY BE OBTAINED AGAINST THE COUNTY OR ANY OF ITS OFFICERS, AGENTS, OR EMPLOYEES, INCLUDING ATTORNEYS FEES.

THE CATERER SHALL INDEMNIFY, HOLD HARMLESS, AND DEFEND THE COUNTY AND ALL OF THE COUNTY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, INCLUDING ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES, AND EXPENSE OF ANY CHARACTER WHATSOEVER INCLUDING ATTORNEYS FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF THE COUNTY OR THE COUNTY'S OFFICERS, AGENTS, AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH THE NEGLIGENCE OF THE CATERER OR THE CATERER'S EMPLOYEES, AGENTS, OR SUBCONTRACTORS, GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS AGREEMENT, AND THE CATERER SHALL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST THE COUNTY OR ANY OF ITS OFFICERS, AGENTS, OR EMPLOYEES, INCLUDING ATTORNEYS FEES.

13. **Notices.** Any notice or demand that shall be made regarding this Agreement, shall be made in writing and delivered either in person or by certified or registered mail. Notice by mail shall be complete upon deposit of the paper, postage prepaid, in a post office or official depository under the care and custody of the United States Postal Service addressed as follows:

If to the County:

Horseshoe Director
Midland County Horseshoe
2514 Arena Trail
Midland, TX 79701

With Copy to:

Midland County Judge
Midland County Courthouse
500 N. Loraine, Suite 1100
Midland, TX 79701

If to the Caterer:

The parties hereto may change the above-designated addresses by giving notice pursuant to the terms of this Section.

14. **Release.** THE CATERER HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES THE COUNTY, AND THE COUNTY'S EMPLOYEES, AND OFFICERS FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES, AND CAUSES OF ACTION OF ANY KIND WHATSOEVER THAT THE CATERER HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, AND THE COUNTY'S NEGLIGENCE.

15. **Governing Law and Venue.** The laws of the State of Texas shall govern, construe and enforce all the rights and duties of the parties arising from or relating in any way to the subject matter of this Agreement, without regard to conflict of laws and rules that would direct application of the laws of another jurisdiction. All performance and payment made pursuant to this Agreement shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this Agreement or the performance of this Agreement shall be in Midland County, Texas.

16. **Notice of Alleged Breach; Prerequisites.** As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, the Caterer or its legal representative, shall give the Director, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this Agreement) of such damages, duly verified, within one hundred and twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which the Caterer will settle, the physical and mailing addresses of the Caterer at the time and date the claim was presented and the physical and mailing addresses of the Caterer for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Caterer relies to establish its claim; and a failure to so notify the Director within the time and manner provided herein shall exonerate, excuse and except the County from any liability whatsoever. The County is under no obligation to provide notice to the Caterer that the Caterer's notice is insufficient. The County reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after the Caterer's receipt of notice requesting such additional information.

17. **Termination at Will.** The County may terminate this Agreement at will, for no or any reason, upon giving ten (10) days' written notice to the Caterer. The parties to this Agreement understand and agree that it is in the County's sole and absolute discretion to cancel

the Agreement during the term of the Agreement without penalty to the County. The Caterer has no expectation and has received no guarantees that this Agreement will not be terminated before the end of the Agreement term. The parties have bargained for the flexibility of terminating this Agreement upon tender of the requisite notice at any time during the term of the Agreement. All work under the Agreement shall be suspended upon termination of Agreement becoming effective.

18. **Independent Contractor.** It is expressly understood and agreed that the Caterer shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of the County; that the Caterer shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of *respondet superior* shall not apply as between the County and the Caterer, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between the County and the Caterer. No person performing any of the work and services described hereunder by the Caterer shall be considered an officer, agent, servant or employee of the County. Further, it is specifically understood and agreed that nothing in this Agreement is intended or shall be construed as creating a “Community of Pecuniary Interest” or “An Equal Right of Control” which would give rise to vicarious liability. The Caterer shall be an independent contractor under this Agreement and shall assume all rights, obligations, and liabilities, applicable to it as such independent contractor hereunder. The County does not have the power to direct the order in which the work is done. The County shall not have the right to control the means, methods or details of the Caterer’s work. The Caterer shall assume exclusive responsibility for the work. The Caterer is entirely free to do the work in its own way.

19. **Attorney’s Fees.** **BY EXECUTING THIS AGREEMENT, THE CATERER AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST THE COUNTY REGARDING THE AWARD OF ATTORNEYS FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE AGREEMENT. THE CATERER SPECIFICALLY AGREES THAT IF THE CATERER BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET SEQ., AS AMENDED), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, THE CATERER AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEYS FEES TO WHICH THE CATERER MIGHT OTHERWISE BE ENTITLED.**

THE CATERER AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING KNOWN RIGHT. THE CATERER ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THIS AGREEMENT. THE CATERER FURTHER

ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN THE COUNTY AND THE CATERER. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF GOVERNMENTAL IMMUNITY.

THE CATERER SHALL PAY TO THE COUNTY ALL REASONABLE ATTORNEY'S FEES, COLLECTION COSTS, AND OTHER EXPENSES INCURRED BY THE CHAMBER IN ENFORCING THIS AGREEMENT. THE CATERER AND THE COUNTY ARE RELYING ON THEIR OWN JUDGMENT. EACH PARTY HAD THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

20. **Assignment.** The Caterer shall not, either directly or indirectly, assign all or any part of this Agreement or any interest, right or privilege herein, without the prior written consent of the Director or the Director's designee. The decision as to whether to grant consent to an assignment shall be in the sole and absolute discretion of the Director or the Director's designee.

21. **Third-Party Beneficiary.** The County's approval of this Agreement does not create a third-party beneficiary. There is no third-party beneficiary to this Agreement. No person or entity who is not a party to this Agreement shall have any third-party beneficiary or other rights hereunder.

22. **Entire Agreement and Binding Effect.** This Agreement constitutes the entire agreement between the County and the Caterer, and supersedes and cancels any and all prior agreements and arrangements as to the matters covered herein or relating hereto. No prior written or prior or contemporaneous oral promises or representations shall be binding. The provisions of this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties.

23. **Amendments.** This Agreement may not be amended, supplemented or modified except by an instrument in writing signed by both parties to this Agreement. Nothing in this Agreement is intended to confer on any person other than the parties to this Agreement any rights or remedies under or by reason of this Agreement.

[Signature Page Follows]

The parties have caused this Agreement to be executed and become effective as of the first date indicated above.

MIDLAND COUNTY, TEXAS

Steven Garcia, Director – Midland County
Horseshoe

CATERER: _____

By: _____

Printed Name: _____

Title: _____

Phone No.: _____